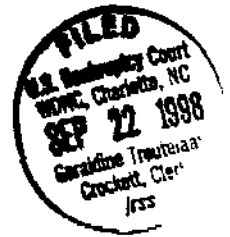


UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA



In Re: ) Case No. 98-31358  
 ) Chapter 13  
CURTIS JEFFERSON, JR. )  
 )  
Debtor(s). ) JUDGEMENT ENTERED ON SEP 22 1998

ORDER SUSTAINING OBJECTION TO CONFIRMATION

This matter is before the court for hearing on confirmation of debtor's proposed Chapter 13 plan of reorganization and Lysa Jefferson's objection thereto. The court has concluded that Ms. Jefferson's objection should be sustained and confirmation of the debtor's plan denied.

1. Ms. Jefferson is a creditor of the debtor by virtue of a Judgment/Order of Equitable Distribution (the "ED Order") entered in the District Court of Wake County, North Carolina. That order constitutes a judgment against the debtor totaling \$28,379.13. The debtor was ordered to pay \$15,000 of the judgment debt to Ms. Jefferson in June of 1997, and the remainder was to be paid in May of 1998. The debtor has paid only \$5,000 to Ms. Jefferson.

2. On November 7, 1997, the debtor filed a Chapter 7 petition.

3. Ms. Jefferson initiated an adversary proceeding in the Chapter 7 case contesting the dischargeability of her judgment. The debtor did not dispute the nondischargeable nature of the debt owed Ms. Jefferson due to a finding of fraud in the State Court Equitable Distribution Action. Consequently, the debtor consented

to the entry of an order finding the debt to be nondischargeable pursuant to the provisions of 11 U.S.C. §523(a)(2), (4), (6), and (15).<sup>1</sup>

4. The debtor received his discharge as to all but Ms. Jefferson's debt in the Chapter 7 proceeding on February 26, 1998. Then, on June 5, 1998, he filed the present Chapter 13 case. The debtor's proposed Chapter 13 Plan scheduled Ms. Jefferson's claim in the amount of \$23,779.13 and proposed to pay twenty percent of the claim over forty-four months, for a total payment of \$4,775.82. The proposed plan would permit the debtor to retain his residence, two other tracts of real property, two cars, and other items.

5. Ms. Jefferson filed this objection to the confirmation of debtor's proposed plan on the grounds that debtor's plan had not been filed in good faith. Specifically, she objected to the

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<sup>1</sup> The ED Order found that

[the debtor] wasted, converted and disposed of marital property during the period after separation of the parties and before the time of distribution in that [the debtor] either forged or procured a forged signature of [Ms. Jefferson] on the deed to the marital residence when the home was sold to a third party on August 29, 1994 . . . [The debtor] engaged in fraudulent conduct in that he disposed of the proceeds from the closing of the sale of the marital residence without [Ms. Jefferson's] knowledge or consent and with the intent that she not have knowledge of what he was doing with the proceeds.

confirmation of the plan based on the nature and nondischargeability of her debt in the Chapter 7 case, the nature and amount of other debts to be paid under the proposed plan, and the amount of property the debtor intended to retain under the plan.

6. The issue before the court is whether the debtor's filing of this Chapter 13 case in the circumstances outlined above violates §1325(a)(3) of the Bankruptcy Code which requires that a Chapter 13 plan of reorganization be "proposed in good faith and not by any means forbidden by law." While that determination ultimately turns on the facts of each case, the Circuit Courts have established standards for application of §1325(a)(3).

7. In Deans v. O'Donnell, 692 F.2d 968 (4th Cir. 1982), the Fourth Circuit held that in determining whether a Chapter 13 plan meets the good faith standard required by §1325(a)(3), "the totality of circumstances must be examined on a case by case basis". Id. at 972. The Court listed a number of factors, not considered all-inclusive, which should be considered when determining whether a Chapter 13 plan has been proposed in good faith. Those factors include: "the percentage of proposed repayment, . . . the debtor's financial situation, the period of time payment will be made, the debtor's employment history and prospects, the nature and amount of unsecured claims, the debtor's

past bankruptcy filings, the debtor's honesty in representing facts, and any unusual or exceptional problems facing the particular debtor." Id.

8. Subsequently, in Neufeld v. Freeman, 794 F.2d 149 (4th Cir. 1986), the Fourth Circuit supplemented the factors enumerated in Deans with an inquiry into whether the Chapter 13 debtor was seeking to discharge an obligation which would be nondischargeable in Chapter 7.

9. The Tenth Circuit in In re Rasmussen, 888 F.2d 703 (10th Cir. 1989), followed the Fourth Circuit's Deans and Neufeld decisions in holding that a Chapter 13 plan was not proposed in good faith and could not be confirmed. In determining that the Chapter 13 plan had not been proposed in good faith, the Court largely relied on the fact that the plan proposed reduced payment of a fraud debt that had been held nondischargeable in a prior Chapter 7 action. The Court stated that the debtor's use of the more liberal discharge provisions of Chapter 13, "though lawful in itself, may well signal an 'abuse of the provisions, purpose, or spirit' of the [Code], especially where a major portion of the claims sought to be discharged arises out of pre-petition fraud or other wrongful conduct and the debtor proposes only minimal repayment of these claims under the plan." Id. at 705. The Court noted that this approach is not counter to the liberal discharge

provisions of Chapter 13 under which debts resulting from illegal acts such as fraud and embezzlement may typically be discharged. Rather, the Court stated, this approach "ensures against manipulation of the statute by debtors who default on obligations grounded in dishonesty and who subsequently seek refuge in Chapter 13 in order to avoid, at minimal cost, a nondischargeable debt." Id. at 705-706.

10. Application of these principles to the facts in this case requires the conclusion that this Chapter 13 case was not filed in good faith. While there are some points to be made for the debtor, the court has concluded that the totality of the circumstances demonstrates a lack of "good faith" based upon the following factors:

(a) The debtor's plan proposes to pay only minimal distribution while allowing him to retain substantial assets. Because of the prior Chapter 7 filing, the debtor has only one non-priority unsecured creditor, Ms. Jefferson. The debtor proposes to pay only \$4,775.82 (or twenty percent) of her \$23,779.13 claim while himself keeping significant real estate and other property. This circumstance is exacerbated when the Chapter 7 and Chapter 13 cases are viewed together - the debtor's proposed distribution amounts to less than ten percent of his unsecured debts prior to his Chapter 7 discharge.

(b) The debtor has demonstrated substantial earnings capacity. He has had significant disposable income and the capacity to pay creditors.

(c) The Chapter 13 petition was filed just over three months after the debtor received his discharge in his prior Chapter 7 case. More important, it was filed shortly after debtor had acknowledged the non-dischargeability of Ms. Jefferson's debt and just prior to entry of the court's Order finding her debt non-dischargeable. Thus, the timing of the Chapter 13 filing appears directly motivated by the non-dischargeability of Ms. Jefferson's debt in the Chapter 7 case.

(d) There is no significant change in the debtor's circumstances that would justify the Chapter 13 filing. The debtor's assertions in this regard are not well-founded: The illness of his current wife (who is not a debtor) is not sufficient justification because that was temporary and the debtor made no showing of any actual adverse impact as a result of the illness. His change in employment is not a justification for the Chapter 13 because it occurred some time after the petition was filed. In any event, the debtor is under no disability and his prospects have appeared good throughout.

(e) The debt the debtor seeks to discharge in the Chapter 13 case is one resulting from the debtor's fraud and was not

dischargeable in his prior Chapter 7 case.

11. From this analysis, the court finds and concludes that the debtor's purpose for filing this Chapter 13 case was to attempt to discharge (at minimal cost to him) the fraud debt that he could not discharge in his Chapter 7 case. Through the two-step filings of the Chapter 7 followed by this Chapter 13, the debtor is attempting to accomplish what he could not have done in a Chapter 13 (or a Chapter 7) alone. If he filed only a Chapter 13, he could obtain a discharge of Ms. Jefferson's debt, but only at the higher cost of paying something to all of his unsecured creditors. (It appears unlikely that Mr. Jefferson could have proposed a confirmable Chapter 13 Plan). If he filed only a Chapter 7, he could pay nothing to his other unsecured creditors, but could not discharge Ms. Jefferson's debt. By the two-step filing procedure the debtor seeks to pay nothing to his other unsecured creditors and obtain a discharge of Ms. Jefferson's debt at minimal cost.

12. The court concludes that this Chapter 13 case was not filed in good faith, but rather as a device to obtain discharge of a nondischargeable debt. As such, the filing is an abuse of the bankruptcy system and may not be confirmed.

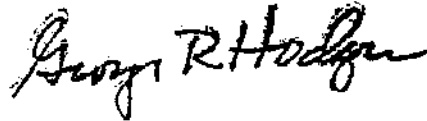
It is therefore ORDERED that:

1. Lysa Jefferson's objection to confirmation is sustained;
2. Confirmation of the debtor's Chapter 13 plan is denied;

and

3. The debtor shall have 30 days within which to present a Plan which may be confirmed; the court will continue this matter for hearing on October 13, 1998, and at that time will dismiss the case unless a Plan is confirmed.

September 21, 1998.



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George R. Hodges  
United States Bankruptcy Judge